



## **FACTUAL HISTORY**

OWCP accepted that appellant, then a 54-year-old letter carrier, sustained a right knee medial meniscus tear due to factors of his federal employment.

On June 9, 2011 appellant filed a claim for a schedule award.

By decision dated June 29, 2011, OWCP granted appellant a schedule award for nine percent permanent impairment of the left lower extremity.

On July 21, 2011 appellant requested an oral hearing before an OWCP hearing representative arguing that the schedule award should have been for the right lower extremity.

In an October 6, 2011 notice, the Branch of Hearings and Review scheduled a telephonic hearing for 1:00 p.m. eastern time on November 15, 2011. It provided appellant with a toll-free telephone number and the pass code for accessing the hearing. OWCP advised him that postponement of the hearing would only be permitted upon receipt of documentation showing his nonelective hospitalization or that the death of a spouse, parent or child prevented his attendance. The notice was mailed to appellant's address of record.

On November 15, 2011 appellant failed to call the toll-free number to participate in the telephonic hearing.

By decision dated December 9, 2011, an OWCP hearing representative found that appellant failed to appear at the hearing and had abandoned his request. There was no evidence that he contacted OWCP prior to or subsequent to the scheduled hearing.

## **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>3</sup> Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>4</sup> OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.<sup>5</sup>

Section 10.622(f) of OWCP's regulations provide that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.<sup>6</sup> Where good cause for failure to appear is shown, another hearing

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<sup>3</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>4</sup> 20 C.F.R. § 10.617(b).

<sup>5</sup> See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

<sup>6</sup> 20 C.F.R. § 10.622(f).

will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record. Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

The record establishes that, on October 6, 2011, in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled telephonic hearing to be held on November 15, 2011 at 1:00 p.m. eastern time. The hearing notice was properly mailed to appellant's last known address of record. In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.<sup>8</sup> The Board finds that the notice was sent more than 30 days prior to the scheduled hearing date of November 15, 2011. The record establishes that appellant did not call at the appointed time. Further, he did not request a postponement of the hearing prior to November 15, 2011 or subsequently explain his failure to appear at the hearing within 10 days of the scheduled hearing. The Board finds that appellant abandoned his request for a hearing.

On appeal appellant argues the merits of his claim. As more than 180 days have elapsed from the issuance of OWCP's last merit decision dated June 29, 2011 to the filing of the current appeal on March 14, 2012, the Board concludes that it has no jurisdiction over the merits of the case.<sup>9</sup> Thus, appellant's arguments are not substantiated.

### CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>8</sup> See e.g., *Kenneth E. Harris*, 54 ECAB 502 (2003).

<sup>9</sup> See *supra* note 1.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board